

Maine Revised Statutes
Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES
Chapter 3: MENTAL HEALTH

§3863. EMERGENCY PROCEDURE

A person may be admitted to a psychiatric hospital on an emergency basis according to the following procedures. [2007, c. 319, §9 (AMD).]

1. Application. Any health officer, law enforcement officer or other person may apply to admit a person to a psychiatric hospital, subject to the prohibitions and penalties of section 3805, stating:

A. The applicant's belief that the person is mentally ill and, because of the person's illness, poses a likelihood of serious harm; and [2009, c. 651, §13 (AMD).]

B. The grounds for this belief. [1983, c. 459, §7 (NEW).]

[2009, c. 651, §13 (AMD) .]

2. Certifying examination. The written application must be accompanied by a dated certificate, signed by a medical practitioner stating:

A. That the practitioner has examined the person on the date of the certificate; [2009, c. 651, §14 (AMD).]

B. That the medical practitioner is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. The written certificate must include a description of the grounds for that opinion. The opinion may be based on personal observation or on history and information from other sources considered reliable by the examiner, including, but not limited to, family members; and [2015, c. 309, §2 (AMD).]

C. That adequate community resources are unavailable for care and treatment of the person's mental illness. [2015, c. 309, §2 (AMD).]

D. [2015, c. 309, §2 (RP).]

[2015, c. 309, §2 (AMD) .]

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

[2007, c. 319, §9 (AMD) .]

3. Judicial review. The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace, who may review the original application and accompanying certificate or a facsimile transmission of them.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting psychiatric hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice. [2007, c. 319, §9 (AMD) .]

B. A person may not be held against the person's will in a hospital under this section, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 24 hours, pending endorsement by a judge or justice, if:

- (1) For a person informally admitted under section 3831, the chief administrative officer of the psychiatric hospital undertakes to secure the endorsement immediately upon execution of the certificate by the examiner; and
- (2) For a person sought to be involuntarily admitted under this section, the person or persons seeking the involuntary admission undertake to secure the endorsement immediately upon execution of the certificate by the examiner. [2007, c. 319, §9 (AMD) .]

C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be admitted informally under section 3831 or involuntarily under this section may be transported to a psychiatric hospital and held there for evaluation and treatment pending judicial endorsement of the application and certificate if the endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00 p.m. [2007, c. 319, §9 (AMD) .]

D. A person who has been held against that person's will for no more than 24 hours pursuant to paragraph B may be held for a reasonable additional period of time, not to exceed 48 hours, if:

- (1) The hospital has had an evaluation of the person conducted by an appropriately designated individual and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness;
- (2) The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or other appropriate alternative; and
- (3) The hospital has notified the department of the name of the person, the location of the person, the name of the appropriately designated individual who conducted the evaluation pursuant to subparagraph (1) and the time the person first presented to the hospital. [2015, c. 309, §3 (NEW) .]

E. If a person remains in a hospital for the full 48 hours allowed under paragraph D, the person may be held for one additional 48-hour period, if:

- (1) The hospital satisfies again the requirements of paragraph D; and
- (2) The department provides its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative. [2015, c. 309, §3 (NEW) .]

[2015, c. 309, §3 (AMD) .]

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, a law enforcement officer or other person designated by the judge or justice may take the person into custody and transport that person to the psychiatric hospital designated in the application. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual. [2007, c. 319, §9 (AMD).]

B. The Department of Health and Human Services is responsible for any reasonable transportation expenses under this section, including return from the psychiatric hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available. [2015, c. 309, §4 (AMD).]

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a psychiatric hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the psychiatric hospital and the jail or local correctional or detention facility. [2007, c. 319, §9 (AMD).]

[2015, c. 309, §4 (AMD) .]

5. Continuation of hospitalization.

[2009, c. 651, §15 (RP) .]

5-A. Continuation of hospitalization. If there is need for further hospitalization of the person as determined by the chief administrative officer of the hospital, the chief administrative officer shall first determine if the person may be informally admitted under section 3831. If informal admission is not suitable or is refused by the person, the chief administrative officer may seek involuntary commitment in accordance with this subsection.

A. If the person is at a state mental health institute, the chief administrative officer may seek involuntary commitment by applying for an order under section 3864. [2009, c. 651, §16 (NEW).]

B. If the person is at a designated nonstate mental health institution, the chief administrative officer may seek involuntary commitment only by requesting the commissioner to apply for an order under section 3864. [2009, c. 651, §16 (NEW).]

C. An application under this subsection must be made to the District Court having territorial jurisdiction over the psychiatric hospital to which the person is admitted on an emergency basis and must be filed within 3 days from the date of admission of the patient under this section, except that, if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday. If no application to the District Court is timely filed, the person must be promptly discharged. [2009, c. 651, §16 (NEW).]

[2009, c. 651, §16 (NEW) .]

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the psychiatric hospital shall notify, as soon as possible regarding the fact of admission, the person's:

A. Guardian, if known; [1997, c. 422, §12 (AMD).]

B. Spouse; [1997, c. 422, §12 (AMD).]

C. Parent; [1997, c. 422, §12 (AMD).]

D. Adult child; or [1997, c. 422, §12 (AMD).]

E. Either the next of kin or a friend, if no guardian or immediate family member is known or can be quickly located. [2009, c. 651, §17 (AMD).]

If the chief administrative officer has reason to believe that notice to any individual in paragraphs A to E would pose risk of harm to the person admitted, then notice may not be given to that individual.

[2009, c. 651, §17 (AMD) .]

6-A. Notification to law enforcement of release after examination. When a person is taken by a law enforcement officer to a hospital for examination under this section and not admitted but released, the chief administrative officer of the hospital shall notify the law enforcement officer or the law enforcement officer's agency of that release.

[2009, c. 451, §10 (NEW) .]

7. Post-admission examination. Every patient admitted to a psychiatric hospital under this section must be examined as soon as practicable after the patient's admission. If findings required for admission under subsection 2 are not certified in a 2nd opinion by a staff physician or licensed clinical psychologist within 24 hours after admission, the person must be immediately discharged.

A. [2009, c. 651, §18 (RP) .]

B. [2009, c. 651, §18 (RP) .]

C. [2009, c. 651, §18 (RP) .]

[2009, c. 651, §18 (AMD) .]

7-A. Post-admission discharge. If it is necessary to discharge a person because findings required for admission under subsection 2 are not certified in a 2nd opinion by a staff physician or licensed clinical psychologist after examination in accordance with subsection 7, the staff physician or licensed clinical psychologist shall record the discharge on the written application, which must contain a statement that the findings required for the person's admission specified under subsection 2 were not met.

[2015, c. 309, §5 (NEW) .]

8. Rehospitalization from progressive treatment program. An ACT team practitioner or the commissioner may apply under this section to admit to a state mental health institute a patient who fails to fully participate in the progressive treatment program in accordance with section 3873-A.

[2009, c. 651, §19 (AMD) .]

9. Limitation. Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

[2011, c. 541, §2 (NEW) .]

SECTION HISTORY

1983, c. 459, §7 (NEW). 1985, c. 815, (AMD). 1987, c. 736, §53 (AMD). 1989, c. 568, §§1,3 (AMD). 1993, c. 592, §1 (AMD). 1993, c. 596, §3 (AMD). 1995, c. 62, §3 (AMD). 1995, c. 143, §1 (AMD). 1995, c. 364, §1 (AMD). 1995, c. 496, §2 (AMD). 1995, c. 560, §K37 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 422, §§8-12 (AMD). 1997, c. 438, §2 (AMD). 1997, c. 683, §B23 (AMD). RR 2001, c. 2, §A43 (COR). 2001, c. 354, §3 (AMD). 2003, c. 206, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 519, §§BBBB5-8 (AMD). 2005, c. 519, §§BBBB20 (AFF). 2007, c. 319, §9 (AMD). 2009, c. 276, §1 (AMD). 2009, c. 451, §10 (AMD). 2009, c. 651, §§13-19 (AMD). 2011, c. 541, §2 (AMD). 2015, c. 309, §§2-5 (AMD).

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